

REMARKS

The Office Action mailed March 28, 2008 has been received and reviewed. Each of claims 1-44 stands rejected. More specifically, claims 9, 18, and 27-41 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Claims 1-44 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,602,761 to Spoeerre et al. (hereinafter the “Spoeerre reference”). Reconsideration of the present application in view of the above amendments and the following remarks is respectfully requested.

Rejections based upon 35 U.S.C. § 101

Claims 9, 18, and 27-41 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. As amended herein, claims 28 and 34 have been amended to explicitly include “computer storage medium” in the claim language. Thus, claims 28-41 can no longer be considered to be software because the claims require a tangible component. Similarly, claims 9, 18, and 27 have been amended to recite “computer storage medium” to clarify that the claims are not directed to communications media and/or carrier waves. In light of these amendments, Applicants respectfully request withdrawal of the 35 U.S.C. § 101 rejections.

Rejections based upon 35 U.S.C. § 102(b)

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdeggal Brothers v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). “The identical invention must be shown in as complete detail as is contained in the . . . claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 19133, 1920 (Fed. Cir. 1989); *see also*, MPEP § 2131.

Claims 1-44 stand rejected under 35 U.S.C. § 102(b) as being anticipated by the Spoerre reference. As the Spoerre reference does not describe, either expressly or inherently, each and every element of the rejected claims, Applicants respectfully traverse the rejection as hereinafter set forth.

Independent claim 1, as currently amended, recites a method for monitoring a process which comprises, creating a signature representative of the process, continuously updating the created signature, and detecting abnormalities based upon the continuously updated signature, wherein the process is related to *usage of networked computing devices* in a datacenter, and wherein the signature includes information related to *time sensitive averaging* that accounts for variation in a business cycle. As stated in the Specification, time sensitive averaging accounts for “large differences in average values during peak usage versus off hours” by monitoring time interval ranges.

By way of contrast, the Spoerre reference discloses a machine monitoring technique for monitoring *vibrations* in *industrial machinery*. See Spoerre reference at Abstract, Col. 5, ll. 10-56. Thus, the Spoerre reference does not disclose monitoring usage of networked computing devices in a datacenter. See *id.* Nor does the Spoerre reference disclose time sensitive averaging. See *generally id.* Instead, the Spoerre reference discloses a statistical modeling that, while giving less weight to older information, fails to consider business cycles in signature creation and updating. See the Spoerre reference at Col. 10, ll. 2-4. Accordingly, it is respectfully submitted that the Spoerre reference fails to describe, either expressly or inherently, each and every element of currently amended claim 1. Moreover, the Spoerre reference fails to show the identical invention in as complete detail as contained in the claim. Thus, claim 1 is not

anticipated by the Spoerre reference. Therefore, withdrawal of the 35 U.S.C. § 102(b) rejection of this claim is respectfully requested.

Each of independent claims 10, 19, 28, 34, and 42 include amended limitations similar to those in independent claim 1. Thus, each independent claim is allowable for at least the reasons stated with regard to claim 1. Additionally, independent claim 42 includes a limitation directed to the type of parameters considered. Specifically, claim 42 requires that the parameters are a usage variable, utilization, an error, or turn around time. This is different from the Spoerre reference, which is limited to vibrations, pressure, and temperature. *See* Spoerre reference at Col. 5, l. 28. Thus, in addition to the reasons stated with regard to independent claim 1, claim 42 is also allowable because of the parameter limitations included in this amendment. Accordingly, it is respectfully submitted that the Spoerre reference fails to describe, either expressly or inherently, each and every element of currently amended claims 10, 19, 28, 34, and 42. Moreover, the Spoerre reference fails to show the identical invention in as complete detail as contained in the claims. Thus, claims 10, 19, 28, 34, and 42 are not anticipated by the Spoerre reference. Therefore, withdrawal of the 35 U.S.C. § 102(b) rejection of these claims is respectfully requested.

As the Spoerre reference fails to describe, either expressly or inherently, each and every element of independent claims 1, 10, 19, 28, 34, and 42, it is respectfully submitted that these claims are not anticipated by the Spoerre reference. Each of claims 2-9, 11-18, 20-27, 29-33, 35-41, and 43-44 depends, either directly or indirectly, from one of the allowable independent claims and is, accordingly, not anticipated by the Spoerre reference for at least the above-cited reasons. Therefore, withdrawal of the 35 U.S.C. § 102(b) rejection of claims 2-9, 11-18, 20-27, 29-33, 35-41, and 43-44 is respectfully requested.

CONCLUSION

For at least the reasons stated above, claims 1-44 are now in condition for allowance. Applicants respectfully request withdrawal of the pending rejections and allowance of the claims. If any issues remain that would prevent issuance of this application, the Examiner is urged to contact the undersigned – 816-474-6550 or akean@shb.com (such communication via email is herein expressly granted) – to resolve the same. It is believed that no fee is due, however, the Commissioner is hereby authorized to charge any amount required to Deposit Account No. 19-2112.

Respectfully submitted,

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